

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARLOS GONZALEZ,
Plaintiff,

v.

KYLE RUSSELL, et al.,
Defendants.

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CIVIL ACTION NO. 20-4531

ORDER

AND NOW, this 22nd day of March, 2021, upon consideration of Plaintiff Carlos Gonzalez's Amended Complaint (ECF No. 25), it is **ORDERED** that:

1. For the reasons stated in the Court's Memorandum, certain claims in the Amended Complaint are **DISMISSED WITH PREJUDICE**, and other claims are **DISMISSED WITHOUT PREJUDICE**, for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), as follows:

- a. All claims based on grievances are **DISMISSED WITH PREJUDICE**.
- b. All claims against Defendants Kyle A. Russell, Joseph Oscellus, Keith Kowal, Brianna Henry, Woodward, Mike Salters, Doug Mette, Josh Leadbetter, Angel Cristobal, and Robert McFadden, are **DISMISSED WITHOUT PREJUDICE** and with leave to file an amended complaint.

2. The Clerk of Court is directed to **SEND** Gonzalez a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.¹

3. Gonzalez is given thirty (30) days to file a second amended complaint if he chooses to do so and in the event he can allege additional facts to reassert the claims dismissed without prejudice. Any second amended complaint shall identify all defendants in the caption of the second amended complaint in addition to identifying them in the body of the second amended complaint, shall state the basis for Gonzalez's claims against each defendant, and shall bear the title "Second Amended Complaint" and the case number 20-4531. **If Gonzalez files a second amended complaint, his second amended complaint must be a complete document that includes all the bases for Gonzalez's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims.** Claims that are not included in the second amended complaint will not be considered part of this case. When drafting his second amended complaint, Gonzalez should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of a second amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

4. Should Gonzalez choose not to file a second amended complaint and stand on his Amended Complaint as originally submitted, the Court will direct service of his Amended Complaint and **ONLY** his excessive force claims against Mike Daly, his

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents2/forms/forms-pro-se>.

excessive force and deliberate indifference claims against Clinton Wambold, Herbert Shrek, Nurse Samantha Scroggins, and his failure to protect claims against Clinton Wambold, Officer Muniz, and Officer Keiser will proceed and be served on the appropriate Defendants.

5. Gonzalez may also notify the Court that he seeks to proceed on these claims rather than file a second amended complaint. If he files such a notice, Gonzalez is reminded to include the case number for this case, 20-4531.

6. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.